

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENTS

Agenda # III.B.2.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend and adopt air quality rules to establish a general registration system and to apply that system to oil and gas well facilities.

List of Affected Rules: This request to initiate rulemaking would amend ARM 17.8.504, 17.8.505, 17.8.744, and 17.8.1204. The proposed new rules would be codified in a new subchapter of ARM Title 17, chapter 8.

Affected Parties Summary: The proposed amendments and new rules could affect all oil and gas well facilities regulated by the Department under the air quality rules.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments and adoption, and take testimony on inclusion of the rule amendments and new rules in the State Implementation Plan (SIP).

Background: The Department is proposing that the Board amend rules and adopt new rules to implement a registration system for certain facilities that presently require an air quality permit. The proposed new rules would establish a general registration system and would establish rules that apply the system to oil and gas well facilities. Currently, with specified exemptions, the administrative rules adopted under the Clean Air Act of Montana require the owner or operator of sources of air pollution to obtain a permit prior to construction or operation. House Bill 700, passed by the 2003 Montana Legislature and codified as 75-2-234, MCA, allows the Board to adopt a registration system in lieu of permitting.

The proposed new rules would provide a system for the owner or operator of a facility to register with the Department in lieu of submitting a permit application and obtaining a permit. The owner or operator of a registered facility still would be required to supply information that is consistent with the type and amount of information currently required in a permit application. Registered facilities still would be required to follow rules of operation that are similar to permit conditions. These rules of operation would include emission limitations, air pollution control equipment installation and operation requirements, and requirements for testing, monitoring and reporting. The registered facilities still would be required to comply with any other applicable requirements not listed within the new rules, such as ambient air quality standards, reasonable precautions standards, opacity standards, etc.

Registration in lieu of permitting is appropriate for source categories in which there are a large number of homogenous sources subject to identical requirements and for which there is no substantial benefit from individual permitting. For these homogenous facilities the permit conditions and environmental impact vary little from facility to facility. Oil and gas well facilities fit into this category of sources. Implementing a registration system would allow the Department to use air program staff more efficiently, focusing on major source permitting issues and field compliance activities.

The new rules would include requirements for emission control and operating limitations when necessary. Recordkeeping and reporting requirements would also be required as part of the registration program. This rulemaking process, and any future rulemaking to include additional source categories in the registration system, will provide the opportunity for public comment.

New Rules I through V would provide general facility registration information including definitions, applicability, a description of the registration process, information that must be provided, and a cross-reference to ARM 17.8.504 for the registration fee.

New Rules VI-IX would apply specifically to oil and gas well facilities and contain additional requirements that they would be required to comply with through the registration process. The Department is proposing the oil and gas well facility registration rules as an alternative to regulating the large number of oil and gas well facilities that are currently required to obtain a Montana Air Quality permit, which requires lengthy review of permit applications and preparation of draft and final permits. The registration process would allow the Air Resources Management Bureau to focus on establishing appropriate air pollution control requirements for other sources that require individual permitting and focus on monitoring compliance, while reducing the administrative overhead for both the regulated entities and the Department. This registration approach is necessary to allow the Department to maintain the current level of environmental protection without significantly increasing current staffing levels.

New Rule VI would include the general requirements for a registered oil or gas well facility, and New Rule VII would provide the requirements for emission controls. Oil and gas well facilities also would be required to conduct leak checks and repair any leaks under specified timeframes; these requirements are included in New Rule VIII. New Rule IX would include additional recordkeeping and reporting requirements for an oil or gas well facility. Air pollution control and monitoring, recordkeeping, and reporting requirements would be substantially the same under the registration process as under traditional permitting.

The Department is proposing that the Board amend ARM 17.8.504 and 17.8.505 to require the owner or operator of a registered facility to pay a registration fee in lieu of a Montana Air Quality Permit application fee and pay an annual operation fee. These fees would be the same as the air quality permit application and annual operation fees. The Department is proposing that the Board amend ARM 17.8.744 to exclude registered facilities from the requirement to obtain a Montana Air Quality Permit. The Department is also proposing that the Board amend ARM 17.8.1204 to include registration as a process to limit potential to emit below the threshold that would require a source to obtain a Title V operating permit.

Hearing Information: The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments and adoption and inclusion of the proposed amendments and new rules in the SIP. Section 75-2-205, MCA, states that no rule, rule amendment, or rule repeal under the Clean Air Act of Montana may take effect except after public hearing on due notice. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment and Adoption;
2. Modify the notice and initiate rulemaking; or
3. Determine that amendment and adoption of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the proposed MAR notice attached.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment and Adoption.